IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 348 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF BABUBHAI H KANADA

Versus

NATWARLAL H CHANDRANA

Appearance:

MR DU SHAH for Petitioners

MR JR NANAVATI for Respondents

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/07/2000

ORAL JUDGEMENT

This is a Civil Revision Application filed under Section 29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 (in short " the Act") by original defendants/tenants challenging legality, correctness and propriety of the judgment Exh.23 dated 3rd March, 1988 of learned Joint District Judge, Rajkot (who will be referred to hereinafter as the Appellate Judge) rendered in Regular Civil Appeal No. 45 of 1984, whereby he was pleased to confirm the judgment Exh. 144 dated 31st December, 1983 rendered by the Judge, Small Causes Court, Rajkot, (who will be referred to hereinafter as the learned Judge of the trial Court) in Rent Suit No. 345 of 1981.

2. Here in this Civil Revision Application, revision petitioners are the legal heirs and representatives of original defendant/tenant Babubhai Hirachand Kanada, while revision opponent No.1 -Natwarlal Hiraji Chandrana is original plaintiff who was the landlord of the suit premises, and revision opponent Nos. 2 and 3 are the tenants who were original defendant nos. 6 and 7 in the suit before the trial court. Therefore, for the sake of convenience, parties will be referred to hereainfter as the plaintiff and defendants respectively.

3. The facts leading to this Civil Revision Application in a nutshell are as follows :-

Original landlord -Natwarlal Hiraji Chandrana was an owner of a building known as " Sarswati Bhuvan" situated on Plot No.44 in Municipal Employees Co-operative Housing Society on Kishanpara Main Road, Rajkot. The said building is consisting of ground-floor and first-floor. As per case of the plaintiff, the suit premises are on the first floor and they consist of one room, kitchen, Osari and a Ravesh (Balcony). According to the plaintiff, the said suit premises were let to defendants for a monthly rent at the rate of Rs.113/- plus taxes and tenancy month of the defendants was according to British Calendar Month. The plaintiff was bonafide requiring the said suit premises for his own occupation and by his family members, and therefore, case of the plaintiff for suit premises was reasonable and bonafide requirement for his personal occupation and his family members.

It was also the case of the plaintiff that defendant was in arrears of rent for a period from 1st November, 1977 to 31st September, 1981, and therefore, as per the case of the plaintiff, the defendant was a

tenant-in-arrears of rent for more than six months and he had neglected to pay the said arrears of rent within one month from date of service of suit notice. On aforesaid two grounds, plaintiff, by serving a notice, terminated tenancy of the defendant, and thereafter, he filed a suit against defendant for eviction of suit premises mainly on two grounds. Firstly on the ground that his case falls under section 13 (1)(g) of the Act and secondly that his case also falls under section 12(3)(a) of the Act. Plaintiff had also prayed for a decree to recover Rs. 3,697-64 Ps. Plaintiff's suit was registered as Rent Suit No. 345 of 1981.

Defendant appeared and contested that suit by filing his written statement at Ex.7, wherein he has denied practically all pleadings of the plaintiff pleaded in the plaint. It is the case of the defendant that he had paid arrears of rent due for the period upto 30th November, 1979, meaning thereby he was in arrears of rent due from 1st December, 1979 as alleged by the plaintiff. As against this case, it was the contention of the defendant that rent as shown fallen due and payable from 1st December, 1979, is on account of plaintiff's unwillingness to accept the same, though the defendant was always ready and willing to pay the arrears of rent due. It appears from the record that defendant filed separately one application bearing Civil Misc. Application No. 659 of 1981 for fixation of the standard rent of suit premises. Both the proceedings were consolidated by the learned trial Judge and the learned Judge of the trial court framed necessary issues at Ex.9. Both the parties have led their oral as well as documentary evidence in the suit. After hearing the arguments of the learned advocates of both the parties and after analysing and appreciating the evidence led by both the parties, the learned Judge of the Trial Court was pleased to come to a conclusion that defendant/tenant was tenant in-arrears-of rent for more than six months i.e. for the period from 1st December, 1979. He was also pleased to come to a conclusion that defendant was ready and willing to pay rent. On the point of suit premises being required reasonably and bonafide by the plaintiff, the learned Judge of the trial court accepted the case of the plaintiff by holding that plaintiff reasonably and bonafide requires the possession of the suit premises for his personal use and occupation. So far as the case with regard to greater hardship is concerned, the learned Judge of the trial court has come to a conclusion that greater hardship would be caused to the plaintiff by refusing to pass a decree for eviction in his favour, and therefore, by rendering his judgment,

Exh. 144 the learned Judge of the trial court passed a decree in favour of plaintiff for eviction of the suit premises and also for money decree to recover Rs.4,965/-. He was also pleased to fix the standard rent of the suit premises at the rate of Rs.130/- per month inclusive of all taxes. Learned Judge of the trial court, though he passed the decree for eviction of the suit premises, granted time to defendant to vacate the suit premises latest by 31st December, 1985.

Being aggrieved against and dissatisfied with the said judgment of the learned Judge of the trial Court, heirs and legal representatives of original defendant/tenant preferred Regular Civil Appeal No. 45 of 1984 in District Court, Rajkot. In that Regular Civil Appeal No. 45 of 1984, the learned advocates of both the parties advanced their arguments, and the learned Appellate Judge of the District Court, after hearing the learned advocates of both the parties, and after analysing and appreciating the evidence led by both the parties in the suit, and on perusal of Record and Proceedings of the case, rendered the judgment Ex. 23 on 3rd March, 1988 and by that judgment, he was pleased to dismiss the appeal of the appellant/defendant/tenant by confirming the judgment of the trial court.

Being aggrieved against and dissatisfied with the said judgment Ex. 23 dated 3rd March, 1988 rendered by Appellate Judge in Regular Civil Appeal No.45 of 1984, the appellants who were heirs and legal representatives of original defendant/tenant before the Appellate Court, have preferred this Civil Revision Application.

4. It is true that powers of the High Court vested under Section 29(2) of the Act are somewhat on larger side than the powers conferred on it under Section 115 of the Civil Procedure Code, but that revisional powers are circumscribed. By that powers, High Court is empowered to correct errors which may make the Judgment contrary to law and that errors must be such that they may go to the root of the matter.

(B) In case of PATEL VALMIK HIMATLAL AND OTHERS vs. PATEL MOHANLAL MULJIBHAI (DEAD THROUGH LRS.), reported in (1998) 7 SCC 383, Hon'ble Supreme Court has been pleased to make legal position clear by holding that powers under Section 29(2) of the Act are revisional powers with which the High Court is clothed and that Sec. 29(2) empowers the High Court to correct the errors committed by the trial court, but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence.

Mere fact that different view is possible on reappreciation of evidence cannot be a ground for exercise of revisional jurisdiction. The High Court can not substitute its own findings on a question of fact for the finding recorded by the courts below on reappraisal of evidence.

5. Keeping in mind the above legal position with regard to scope and ambit of Section 29(2) of the Act, this court has examined the judgment of the Appellate Court. Shri D.U.Shah, the learned advocate for Revision -petitioners has argued that considering the evidence led by both the parties, the learned Judge of the trial court as well as the appellate Judge ought to have dismissed the suit of the plaintiff. As per his arguments, requirement of plaintiffs cannot be said to be reasonable and bonafide. He has further argued that considering the evidence led by both the parties, greater hardship would be caused to defendants, if decree is passed. He has taken this court through the judgment of the Appellate Judge.

6. Shri J.R.Nanavati, the learned advocate for the Revision -opponents has argued that this is a case in which there is a consistent and concurrent finding of two courts below both on the facts as well on law, and therefore, the judgment of the Appellate Judge cannot be said to be a judgment "not according to law".

7. I have gone through the judgment of the Appellate Judge which is challenged in this Civil Revision Application, and I find that said judgment of the Appellate Judge is perfectly according to law. In case of BHAICHAND RATANSHI vs. LAXMISHANKER TRIBHOVAN, AIR 1981 SUPREME COURT 1690, the Hon'ble Supreme Court has held that when findings of lower courts are not illegal, perverse or erroneous, the High Court cannot be justified in setting aside any decision by substituting its own findings for those of the lower courts. In the present case on hand, I find that there is a concurrent and consistent findings of both the courts below, and there is nothing otherwise on record to come to a different conclusion. Hence this court has no other alternative except to accept and confirm the judgment of the Appellate Judge. Under the circumstances, I find that the findings arrived at by both the courts below are according to law, and the same are not required to be interfered with by this court.

8. For the foregoing discussions and observation, the present Civil Revision Application is devoid of

merits, and therefore, it deserves to be dismissed, and accordingly same is dismissed. Rule is discharged with no order as to costs.

9. Still however, Shri D.U.Shah, the learned advocate for the Revision -petitioners has argued that to day, the residential accommodations are not easily available at the same rate which was prevailing at the time when the suit was filed. He has, therefore, requested this court to grant a reasonable time of three years so as to enable the defendants to find out alternative accommodation on decree being executed. Shri J.R.Nanavati, the learned advocate for Revision -opponents has fairly conceded that at the best a reasonable period of one year can be granted by asking the defendants to vacate the suit premises and hand over the actual, vacant and physical possession of the suit premises on executing an undertaking with usual terms and conditions before this court within a reasonable period.

10. Looking to the facts and circumstances of the case, this court deems fit, proper and justifiable to grant a reasonable period of two years so as to enable the defendants to find out alternative accommodation from the date of this order. The said period of two years is granted on condition precedent that defendants shall give an undertaking with usual terms and conditions supported with affidavit, within one month from the date of this order before this court.

Date: 4/7/2000. (H.H.MEHTA, J.)
ccshah